



STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
TAMRA NEAL,)	
)	
Complainant,)	
)	
and)	CHARGE NO: 2000SF0658
)	EEOC NO: 21BA2083
MACON COUNTY HEALTH)	ALS NO: S-11503
DEPARTMENT,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). Respondent, Macon County Health Department, has filed a motion for summary decision, arguing that Complainant cannot establish that it treated others outside her protected classification in a more favorable way when it issued certain Action Plans requiring Complainant to perform certain job tasks and when it ultimately terminated Complainant for insubordination. Complainant has not filed a response to the motion for summary decision, although the time for filing a response has expired.

Findings of Fact

Based upon the record in this matter, and upon the standards applicable to motions for summary decisions, I make the following findings of fact:

1. On January 24, 2000, Complainant, an African-American, was hired by Respondent as a Healthy Families Initiative (HFI) Support Worker. At the time of her hire, she was placed on a six-month probation period.

2. Complainant's job required that she initiate and maintain regular weekly contacts with up to 25 HFI families in need of positive parenting and child health and development skills. As a part of her duties Complainant was required to keep accurate notes of her visits with the families and to input her notes into a computer program which allowed others in Respondent's agency to view the nature and extent of Complainant's visits with her HFI families. Complainant was also told that she would be meeting weekly with her supervisor and would be performing "other duties" as requested by supervisory staff.

3. At the beginning of her hire, Complainant and other HFI Support Workers were only assigned a few HFI families such that Complainant and her co-workers frequently had periods in the day when they had nothing to do.

4. On one day in the spring of 2000, Michelle Henkelman, a Caucasian supervisor, asked Complainant to help with filing some documents. Complainant refused Henkelman's request by stating that she had a "meeting" that day. Complainant, however, did not go anywhere that day, and Henkelman noted that Complainant sat at her desk, cleaned out her purse, made several telephone calls and read a magazine in the afternoon.

5. On April 6, 2000, Complainant was issued three "Action Plans" which addressed complaints regarding the frequency of Complainant's use of the telephone for personal calls, her failure to come to work on time, her refusal to assist fellow team members, improper data entry, improper Internet usage, improper telephone etiquette during a telephone survey and attendance. Complainant refused to sign the action plans after Pam Peck (Complainant's immediate supervisor) discussed the substance of the actions plans with her.

6. At all times pertinent to this case, Action Plans issued by Respondent did not have any effect on an employee's chance for obtaining a monetary raise. Moreover,

Action Plans would not go into an employee's personnel file if the Action Plans were resolved to management's satisfaction.

7. On April 6, 2000, Henkelman heard Complainant say after she had received her Action Plans that: "This is bullshit. I hope they fire me so I can take them to court and take all their money."

8. On April 24, 2000, Kim Wilson, an HFI assessment worker told Complainant that Peck wanted her to complete a display board within the next three days because Wilson and Peck would be away at a training session. Complainant did not begin the display board within the next three days, but did assist Wilson on the board on May 1, 2000.

9. On May 8, 2000, Peck met with Complainant and noted that Complainant was making satisfactory progress on the issues contained in the three Action Plans.

10. In the week subsequent to Complainant's May 8, 2000 meeting with Peck, Wilson told Judy Gibbs, Peck's supervisor, that Complainant would not take direction from her, refused to answer direct questions posed by Wilson and failed to give feedback to her from home visits unless verbally requested on several occasions.

11. In the week subsequent to Complainant's May 8, 2000 meeting with Peck, Peck told Gibbs that Complainant refused to face her when spoken to, refused to do assigned tasks, and refused Peck's request to sign the April 6, 2000 Action Plans.

12. In the week subsequent to Complainant's May 8, 2000 meeting with Peck, Henkelman told Gibbs that Complainant refused to do assigned tasks unless Henkelman's African-American secretary made a similar request. Henkelman also informed Peck that she had witnessed Complainant's refusal to turn around and look at Peck when Peck requested her to do it.

13. In the week subsequent to Complainant's May 8, 2000 meeting with Peck, Sharon Stutzman, a Caucasian HFI Support Worker and co-worker of

Complainant, told Gibbs that Complainant had very little interaction with her in spite of the need to discuss their cases in order to cover for each other during absences.

14. On May 12, 2000, certain auditors from the State of Illinois Department of Human Services told Gibbs that Complainant had been rude to them upon learning that one of the auditors was sitting in Complainant's work chair.

15. A few days after May 12, 2000, Peck reported to Gibbs that she had discovered that Complainant had unexplained absences from work whereby Complainant would sign out for a home visit and be gone for almost two hours while reflecting in her documentation that the home visit lasted only fifteen minutes. Gibbs also told Peck that Complainant was not keeping in touch with a resource nurse involved with one of Complainant's clients.

16. On May 16, 2000, Peck learned that Complainant had not notified Respondent's Director of Nursing about a home visit as instructed by Peck. Peck then personally notified the Director about the home visit and reported the incident to Gibbs because Peck believed that Complainant's failure to follow her directive was an act of insubordination. During this conversation, Peck and Gibbs discussed Complainant's over-all behavior and recommended that Complainant be discharged.

17. Peck and Gibbs then informed Jerry Andrews, Respondent's head administrator, about their own observations as well as the reports concerning Complainant's behavior and failure to follow staff directives from Wilson and Henkelman. Andrews then agreed to proceed with the termination of Complainant.

18. On May 17, 2000, Complainant was terminated from her HFI Support Worker position. The reasons for her termination were Respondent's belief that Complainant had repeatedly refused to take directions from her supervisors, that Complainant demonstrated a lack of respect and common courtesy toward the staff, that Complainant had failed to acknowledge her short-comings by refusing to sign her Action

Plans, and that Complainant's documentation in the computer system was inconsistent and below acceptable standards.

19. At the time of Complainant's termination, Complainant was still a probationary employee who had no union or contractual rights to a progressive disciplinary procedure that was available to employees who were not on probation.

20. At all times pertinent to this case Complainant was unaware of any other employees at Respondent who received Action Plans. Respondent actually issued Actions Plans to six female Caucasian workers, one male Caucasian worker, two female African-American workers and one male African-American worker for infractions ranging from not completing tasks as assigned to having too many personal telephone calls, not arriving to work on time, refusal to assist fellow team members, improper data entry, improper Internet use and attendance problems.

21. Respondent replaced Complainant with Lori Butler, an African-American HFI Support Worker.

22. On November 1, 2002, an Order was entered which provided deadlines for filing dispositive motions and set January 13, 2003 as the deadline for filing any response to a pending motion for summary decision.

24. Complainant has not filed a response to the pending motion for summary decision as of the date of the Order.

Conclusions of Law

1. Complainant is an "employee" as that term is defined under the Human Rights Act.

2. Respondent is an "employer" as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

3. When a party supplies sworn facts in its motion for summary judgment that warrant a judgment in its favor as a matter of law, the opposing party may not rest on her pleadings to create a genuine issue of fact.

4. The Commission will not search the record to find reasons to deny a motion for summary decision where the party opposing the motion has failed to file a response and where the motion appears valid on its face.

Determination

The instant motion for summary decision should be granted since Complainant failed to respond in any fashion to the pending motion for summary decision, and the motion otherwise appears to be valid on its face.

Discussion

In her Complaint, Complainant asserts that Respondent issued her three Action Plans on account of her race when Respondent failed to issue Action Plans to others at the work site. She similarly contends that Respondent terminated her on account of her race when Respondent failed to terminate other co-workers who were also insubordinate. In its motion for summary decision, Respondent, through a series of sworn affidavits from Complainant's supervisors, maintained that Complainant could not establish a *prima facie* case of race discrimination since: (1) Complainant has no evidence that non-African-American employees were not issued plans under similar circumstances; and (2) Complainant has no evidence that similarly-situated, non-African-American co-workers were not discharged for insubordinate acts. Alternatively, Respondent contends that even if Complainant could establish a *prima facie* case of race discrimination, she cannot demonstrate that its reasons for issuing the Action Plans or for terminating her were pretexts for race discrimination.

As with all motions for summary decision pending before the Commission, a motion for summary decision shall be granted if the record indicates that there is no

genuine issue as to any material fact, and that the moving party is entitled to a recommended order as a matter of law. (See, section 8-106.1 of the Human Rights Act (775 ILCS 5/8-106.1), and **Bolias and Millard Maintenance Service Company**, 41 Ill. HRC Rep. 3 (1988).) Moreover, in determining whether there is any genuine issue of material fact, the record is construed most strictly against the moving party and most liberally in favor of the opponent. (See, for example, **Armagast v. Medici Gallery and Coffee House**, 47 Ill.App.3d 892, 365 N.E.2d 466, 8 Ill.Dec. 208 (1st Dist., 5th Div., 1977).) Inasmuch as a summary order is a drastic method for disposing cases, it should only be allowed when the right of the moving party is clear and free from doubt. (See, **Susmano v. Associated Internists of Chicago**, 97 Ill.App.3d 215, 422 N.E.2d 879, 52 Ill.Dec. 670 (1st Dist. 1981).) Furthermore, although there is no requirement that the opponent prove her case to overcome the motion, Complainant is required to present some factual basis that would arguably entitle her to a judgment under the applicable law. See, **Schoondyke v. Heil, Heil, Smart & Golee, Inc.**, 89 Ill.App.3d 640, 411 N.E.2d 1168, 44 Ill.Dec. 802 (1st Dist., 2nd Div. 1980).

Initially, it should be noted that Complainant has not helped her situation since she failed to file any sort of a response to Respondent's motion for summary decision. Indeed, the Commission observed in **Jones and Burlington Northern Railroad**, 25 Ill. HRC Rep. 101 (1986) that it would not search the record to find a reason to deny a motion for summary decision where the opponent fails to inform the Commission as to why the motion should not be granted. Indeed, the Appellate Court, in **Fitzpatrick v. Human Rights Commission**, 267 Ill.App.3d 306, 642 N.E.2d 486, 490, 204 Ill.Dec. 785, 789 (4th Dist. 1994) similarly observed that a party cannot rely on her pleadings to create a genuine issue of fact where the moving party supplies sworn facts that would warrant a judgment in its favor as a matter of law.

As to Count I of the Complaint alleging that Respondent issued to Complainant three Action Plans on account of her race, I agree with Respondent that Complainant has failed to establish a *prima facie* case of race discrimination in that Complainant has not demonstrated how her proposed comparables (i.e., Henkelman, a supervisor, and Stutzman, an HFI support worker having different job responsibilities) were similarly situated so as to make a valid comparison based on her race. For example, Complainant failed to file a response indicating that either Henkelman or Stutzman made too many personal telephone calls, failed to complete their assignments and/or used improper telephone techniques during telephone surveys. Indeed, the record shows that Respondent issued Action Plans covering similar job-short-comings to others in the workplace, and Complainant conceded in her deposition that her supervisors issued the Action Plans only after others had reported her job deficiencies to them.

Moreover, I doubt whether Respondent's issuance of Action Plans qualified as adverse acts as contemplated by the Commission in **Campion v. Blue Cross and Blue Shield Asso.**, ___ Ill. HRC Rep. ___ (1988CF0062, June 27, 1997), for purposes of establishing a *prima facie* case of race discrimination. Specifically, Complainant cites to no actual loss in pay or job status as a result of the issuance of the Action Plans, and Respondent points out that Complainant had made progress with respect to meeting the goals of the Action Plans near the time of her termination. Indeed, I am hard-pressed to find any alteration in the terms or conditions of Complainant's work environment where the Action Plans issued to Complainant demonstrated no disciplinary consequence, and where Complainant's supervisors merely urged her to work a little harder in the areas covered by the Action Plans. See also, **Canady and Caterpillar, Inc.**, ___ Ill. HRC Rep. ___ (1994SA0027, March 17, 1998), where the Commission similarly found no "material" adverse act when the employer gave the complainant an undeserved "below-average" production rating that had no effect on the complainant's wages.

As to Count II of the Complaint alleging wrongful termination an account of her race, Respondent notes that Complainant acknowledged in her deposition that she was unaware of any individuals outside her protected classification that had similar allegations of insubordination that were not terminated. Without any knowledge of who in the workplace received more favorable treatment, Complainant has essentially conceded that she cannot establish a *prima facie* case of race discrimination based on disparate treatment. Indeed, the allegations of her Complaint do not specifically identify any other co-worker as having received more favorable treatment, and Complainant has not set forth any other basis to establish that she was the victim of race discrimination with respect to her termination. Additionally, Complainant has done nothing to counter Respondent's assertion that it held a good-faith belief that Complainant had actually failed to follow directives from her supervisors and had been insubordinate. Accordingly, where Complainant has not filed any sort of response to Respondent's motion for summary decision, and where the substance of Respondent's motion indicates that Respondent otherwise is entitled to a judgment as a matter of law, I find that Respondent is entitled to a summary decision based on this record.

Recommendation

For all of the above reasons, it is recommended that Respondent's motion for summary decision be granted, and that the Complaint and the underlying Charge of Discrimination of Tamra Neal be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 7th DAY OF NOVEMBER, 2003

